

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2049

Cir. Ct. No. 2012CV396

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STEVEN STOFLET,

PLAINTIFF-RESPONDENT,

V.

**CITY OF EAU CLAIRE AND L.E. PHILLIPS MEMORIAL PUBLIC
LIBRARY,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: JON M. THEISEN, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. The City of Eau Claire and L.E. Phillips Memorial Public Library (collectively, the Library) appeal from a judgment and an order in favor of Steven Stoflet. The circuit court concluded Stoflet, a former Library employee, was entitled to health insurance benefits under the Library's written

policy on retiree health insurance. We conclude the policy is ambiguous. We therefore construe the policy against the drafter, the Library, and conclude Stoflet is entitled to coverage. Accordingly, we affirm.

BACKGROUND

¶2 The Library hired Stoflet as an information systems manager on June 3, 1996. Stoflet’s position was eliminated effective January 1, 2010. Stoflet was fifty-four years old at the time. He remained on the Library’s payroll through February 9, 2010, by using his accrued vacation time. His official termination date was therefore February 9, 2010.

¶3 Stoflet turned fifty-five on August 6, 2010. On that date, he became eligible to receive annuity payments under the Wisconsin Retirement System (WRS). *See* WIS. STAT. § 40.23(1)(a).¹ Stoflet subsequently applied for WRS annuity payments. On October 6, 2011, the Department of Employee Trust Funds informed Stoflet that it had received his application, his “benefit” would be “effective” on July 1, 2011, and he could expect to receive his first annuity payment on or about November 1, 2011.

¶4 While he was employed at the Library, Stoflet received health insurance through the Library’s group health insurance plan. His coverage under that plan continued until February 28, 2010, the final day of the final month he was employed by the Library. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Stoflet elected to remain on the Library’s

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

insurance plan for eighteen additional months, paying the premiums himself with the help of a federal subsidy. Stoflet's COBRA coverage expired on August 31, 2011.

¶5 Sometime in August 2011, Stoflet approached the Library's business manager to ask about his eligibility for health insurance benefits under the Library's written policy on retiree health insurance. That policy states, in relevant part:

Upon retirement at age fifty-five (55) or later, the L.E. Phillips Memorial Public Library (LEPMPL) will pay ninety percent (90%) of the amount paid for active Library Professional & Confidential employees toward monthly health insurance premiums until the employee becomes eligible for Medicare, dies, or receives ten (10) years of contributions, whichever comes first. Employees may choose single or family coverage. Employees who were part-time at retirement will receive a prorated benefit. Retired employees who discontinue coverage will not be eligible to re-enroll in a LEPMPL health insurance plan.

Employees retiring before the age of fifty-five (55), but remaining covered by a LEPMPL group health insurance plan will receive the Library's contribution when they reach age fifty-five (55). Retirement is defined as receiving a WRS annuity.

To qualify, eligible employees must also have completed a minimum of five (5) years of continuous service to LEPMPL and must have subscribed to a LEPMPL health insurance plan for a minimum of twelve (12) months immediately prior to retiring.

¶6 On August 17, 2011, the Library informed Stoflet he was not eligible for benefits under the retiree health insurance policy. Stoflet then filed the instant lawsuit, asking the circuit court to order the Library to provide him the benefits described in the policy. The parties subsequently filed cross-motions for summary judgment. The circuit court determined Stoflet was entitled to benefits under the

retiree health insurance policy, and it therefore granted his summary judgment motion. The Library now appeals.

DISCUSSION

¶7 We review a grant of summary judgment independently, applying the same standards as the circuit court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶8 Here, we must determine whether Stoflet is entitled to benefits under the Library's retiree health insurance policy. The parties agree that our interpretation of the policy is governed by the rules of contract interpretation. Interpretation of a contract presents a question of law that we review independently. *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 460, 405 N.W.2d 354 (Ct. App. 1987). Where contract language is plain and unambiguous, we construe it as it stands. *Id.* "When the contract language is ambiguous, however, 'two further rules are applicable: (1) evidence extrinsic to the contract itself may be used to determine the parties' intent and (2) ambiguous contracts are interpreted against the drafter.'" *Maryland Arms Ltd. P'ship v. Connell*, 2010 WI 64, ¶23, 326 Wis. 2d 300, 786 N.W.2d 15 (quoting *Seitzinger v. Community Health Network*, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426). Contract language is ambiguous if it is susceptible to more than one reasonable interpretation. *Kernz v. J.L. French Corp.*, 2003 WI App 140, ¶10, 266 Wis. 2d 124, 667 N.W.2d 751. "A contract, though clear on its face, may be considered latently ambiguous if its application produces absurd or unreasonable results that the parties could not have

intended.” *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶49, 330 Wis. 2d 340, 793 N.W.2d 476.

¶9 The Library argues Stoflet is not entitled to benefits under its retiree health insurance policy because paragraph 1 of the policy states the Library will provide the benefits “[u]pon retirement at age fifty-five (55) or later[.]” The Library argues the term “retirement,” as used in paragraph 1, should be given its ordinary meaning—“the action or fact of leaving one’s job and ceasing to work[.]” *See* NEW OXFORD AMERICAN DICTIONARY 1455 (2001). The Library asserts Stoflet left his job and ceased to work as of February 9, 2010, and he therefore retired on that date. Stoflet did not turn fifty-five until August 6, 2010. The Library therefore argues Stoflet did not retire at age fifty-five or later, and, consequently, he is not entitled to retiree health insurance benefits.

¶10 Stoflet, in turn, argues the term “retirement” is clearly and unambiguously defined in paragraph 2 of the policy, which states, “Retirement is defined as receiving a WRS annuity.” Stoflet argues he began receiving a WRS annuity on July 1, 2011, his WRS benefit effective date, which was over ten months after he turned fifty-five. He therefore argues he retired at age fifty-five or later, as required by paragraph 1 of the policy.

¶11 The Library responds that the definition of retirement in paragraph 2 of the policy is restricted to paragraph 2 and does not apply to paragraphs 1 and 3. The Library argues that applying paragraph 2’s definition of retirement to paragraph 1 produces an absurd result. The Library notes the third sentence of paragraph 1 states, “Employees who were part-time at retirement will receive a prorated benefit.” The Library argues this sentence “only makes sense if ‘retirement’ refers to the time when the employee stops working rather [than] to

when he [or she] first receives a WRS annuity payment.” This is because the date an employee begins receiving a WRS annuity will always be after he or she has stopped working. Consequently, if paragraph 2’s definition of “retirement” applied to the third sentence of paragraph 1, every employee’s health insurance benefit would be prorated to zero because no employee would be working either full-time or part-time as of his or her retirement date.

¶12 We agree with Stoflet that paragraph 2 of the policy clearly defines retirement as “receiving a WRS annuity.” Nothing in the policy indicates that this definition is limited to paragraph 2, or that some other definition applies to paragraphs 1 and 3. However, we also agree with the Library that applying the definition of retirement in paragraph 2 to the third sentence of paragraph 1 produces an absurd result. We therefore conclude the policy contains a latent ambiguity regarding which definition of the term “retirement” applies throughout the policy. *See Town Bank*, 330 Wis. 2d 340, ¶49 (seemingly unambiguous contract language may be latently ambiguous if its application produces absurd or unreasonable results).

¶13 The Library cites extrinsic evidence in attempt to resolve this ambiguity. The Library notes that paragraph 2 of the policy states, “Employees retiring before the age of fifty-five (55), but remaining covered by a LEPMPL group health insurance plan will receive the Library’s contribution when they reach age fifty-five (55).” The Library asserts:

The meaning and intent of the second paragraph is clear once the reader knows that, under Wisconsin law, the **only** circumstance in which a Library employee is eligible to receive a WRS annuity payment before the age of 55 is if he becomes disabled. WIS. STAT. § 40.23(1)(a); WIS. ADMIN. CODE § ETF 50.30. Thus, Library employees who become eligible for and receive a WRS **disability** benefit before the age of 55 are eligible for the Library benefit

upon turning 55 years old if they meet the other requirements set forth in the policy.

The Library therefore argues the definition of retirement in paragraph 2 “simply incorporates the WRS disability standards into the policy[.]” The Library contends this shows that paragraph 2’s definition of retirement was not intended to apply to the other paragraphs, which do not deal with disability benefits.

¶14 The problem with the Library’s argument is that nothing in the policy indicates that paragraph 2 applies only to those receiving disability benefits. The word “disability” does not appear anywhere in the policy. An employee reading the policy would have no way of knowing that paragraph 2 is limited to those disabled before age fifty-five, and he or she would therefore have no indication that the definition of retirement in paragraph 2 is limited to that paragraph. The Library’s argument contravenes employees’ reasonable expectations because, upon reading the policy, an employee could reasonably conclude the definition of retirement contained in paragraph 2 applied to the entire policy. If the Library intended otherwise, it could have made the policy clearer by indicating that paragraph 2 applies only to those receiving disability benefits or by rewriting paragraph 2’s definition of retirement to state, “*For purposes of this paragraph, retirement is defined as receiving a WRS annuity.*” (Italicized language added.) The Library failed to do so. We therefore construe the latent ambiguity in the policy against the Library, as the policy’s drafter, and we adopt Stoflet’s interpretation that the definition of retirement in paragraph 2 applies to the entire policy.

¶15 As discussed above, the Library argues that even if the policy is interpreted using paragraph 2’s definition of retirement, Stoflet will not be entitled to coverage. The third sentence in paragraph 1 requires that his coverage be

prorated based upon whether Stoflet was employed full-time or part-time at retirement. Stoflet had left employment by the time he received his WRS annuity. Therefore, proration results in no benefit due to him.

¶16 Referencing the policy terms, Stoflet argues he is entitled to coverage because:

- He worked full-time continuously for the Library for more than five years;
- He left employment before age fifty-five but, pursuant to his COBRA coverage, remained covered under the Library’s health insurance plan until age fifty-five and for the twelve months immediately before he received his WRS annuity;
- He never discontinued coverage under the Library health insurance plan; and
- He applied for the post-retirement benefit after he reached age fifty-five.

Stoflet provides a reasonable interpretation of the policy language. Given the latent ambiguity within the policy, and when it is read considering reasonable employee expectations concerning coverage, we determine Stoflet is entitled to the health insurance benefit despite the proration provision of paragraph 1.

¶17 The Library next argues that, even if we conclude paragraph 2’s definition of retirement applies to the entire policy, Stoflet is nevertheless ineligible for benefits under paragraph 3. Paragraph 3 provides, “To qualify [for retiree health insurance benefits], eligible employees must ... have subscribed to a LEPMPL health insurance plan for a minimum of twelve (12) months immediately prior to retiring.” Because paragraph 2 defines retirement as “receiving a WRS annuity[,]” the Library argues Stoflet’s retirement date was November 1, 2011—the date he was expected to receive his first WRS annuity payment. Stoflet’s

COBRA coverage expired on August 31, 2011. The Library therefore argues Stoflet did not subscribe to a Library health insurance plan for the twelve months immediately preceding his retirement.

¶18 Stoflet disagrees. He argues the phrase “receiving a WRS annuity” refers to his WRS benefit effective date—July 1, 2011—rather than the date he received his first annuity payment. Because it is undisputed that Stoflet subscribed to a Library health insurance plan for the twelve months immediately preceding July 1, 2011, Stoflet argues he is eligible for benefits under paragraph 3 of the policy.

¶19 We conclude paragraph 2’s definition of retirement is ambiguous. The phrase “receiving a WRS annuity” could reasonably be read to mean the date a person first receives a WRS annuity payment. However, that is not the only reasonable interpretation. The policy refers to “receiving a WRS annuity,” not receiving WRS annuity *payments*. It is reasonable to conclude a person receives a WRS annuity, as opposed to annuity payments, on his or her benefit effective date.

¶20 Neither party cites any extrinsic evidence to clarify paragraph 2’s definition of retirement. We therefore construe the ambiguous language against the Library, as the policy’s drafter, and adopt Stoflet’s interpretation that the phrase “receiving a WRS annuity” refers to the benefit effective date. As outlined above, it is undisputed that Stoflet subscribed to a Library health insurance plan for the twelve months immediately preceding his benefit effective date—July 1, 2011. Stoflet therefore qualifies for retiree health insurance benefits under paragraph 3 of the Library’s policy.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

